

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

UNITED STATES OF AMERICA,)
Third-Party Plaintiff,)
v.)
DONNA B. MABRY,)
Third Party Defendant.)

Civil No. 3:02cv65MU

FILED

CHARLOTTE, N. C.

SEP. 21 2005

U. S. DISTRICT COURT
W. DIST. OF N. C.

JUDGMENT

Plaintiff, Lat Purser and Associates, Inc. ("LPA"), filed suit on February 20, 2002, seeking a refund of \$150 collected by the Internal Revenue Service on account of responsible person assessments made against LPA on June 6, 2001 under Internal Revenue Code 26 U.S.C. § 6672 for unpaid payroll tax liabilities. The government filed an Answer to LPA's Complaint, a Counterclaim against LPA for the balance of the unpaid tax liability, and a Third-Party Complaint against Donna B. Mabry. On June 27, 2002, Donna B. Mabry filed her answer to the Third-Party Complaint.

On June 8, 2004, the Court approved a stipulation dismissing LPA from the litigation.

Beginning on March 14, 2005, this action came on for trial on the United States of America's Third-Party Complaint against Donna B. Mabry, before the Honorable Graham Mullen, District Court Judge, presiding. Plaintiff United States of America was represented by Ms. Dara Oliphant and Mr. Jonathan Carroll and Defendant Donna B. Mabry was represented by Mr. Sol Levine and Mr. Eric D. Levine. The Court empaneled an eight-member jury. After hearing the testimony of the witnesses and reviewing the documents entered into evidence, the jury was given its instructions and the following special interrogatories.

1. Is Donna Mabry a person **responsible** for collecting, accounting for or paying over the taxes withheld from the wages of the employees of New Minnette Textiles for the following quarters:

- a. 4th Quarter of 1997: YES NO
- b. 1st Quarter of 1998: YES NO
- c. 2nd Quarter of 1998: YES NO

2. Did Donna Mabry **willfully** fail to collect, account for or pay over the withholding taxes withheld from the wages of the employees of New Minnette Textiles for the following quarters:

- a. 4th Quarter of 1997: YES NO
- b. 1st Quarter of 1998: YES NO
- c. 2nd Quarter of 1998: YES NO

3. If your answers to questions 1 and 2 are yes, in what amount is Donna Mabry liable?

After deliberating, the jury delivered a verdict of NO to all parts of special interrogatories 1 and 2, and therefore, did not answer special interrogatory 3.

Accordingly, the issues having been duly tried and the jury having duly rendered its verdict,

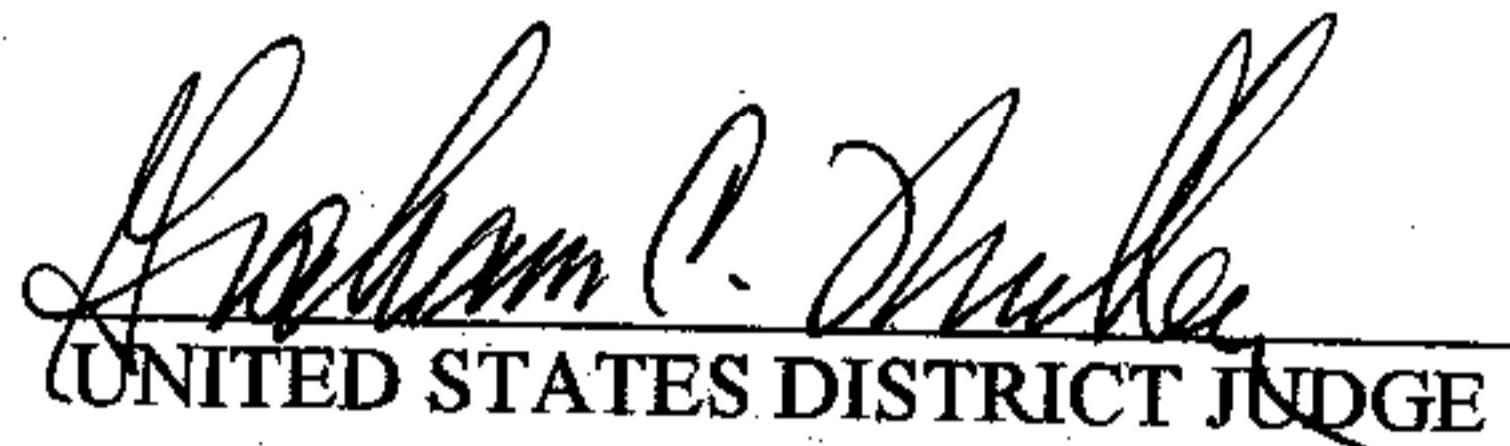
It is Ordered, Adjudged and Decreed as follows:

- 1. Judgment is entered for Defendant Donna B. Mabry and against the United States; and
- 2. The United States recover nothing from Donna B. Mabry on its claim against her.
- 3. The federal tax lien filed by the Internal Revenue Service against the Defendant

Donna B. Mabry on September 24, 2001, in the Cleveland County Clerk of Superior Court, which

has number 01 M 390, is legally unenforceable and shall be cancelled and released as of record immediately, and any other federal tax liens filed against the Defendant associated with the claim in this lawsuit shall also be cancelled and released by the Internal Revenue Service immediately.

Dated at Charlotte, North Carolina, this 21st day of Sept, 2005.



UNITED STATES DISTRICT JUDGE